



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Advanced Architectural Metals, Inc. and its alter egos Advanced Metals, Inc. and Steel Specialties Unlimited, a single employer (28-CA-20730, et al.; 351 NLRB No. 80) Las Vegas, NV Dec. 27, 2007. The Board adopted the administrative law judge's decision finding that the Respondents, Advanced Metals, Inc. and Steel Specialties Unlimited are alter egos of Respondent Advanced Architectural Metals, Inc., and together are a single employer. The Board also adopted the administrative law judge's findings that the Respondents (A) violated Section 8(a)(1) of the Act by unlawfully telling employees not to talk to Carpenters Local 1780 (the Union); by disparaging employees because they were members of the Union; by threatening to close or move the Respondents' facilities because of employees' protected, union activities; by threatening to discriminate against employees' because of their protected, union activities; by threatening to retain tools belonging to employees because of the employees' protected, union activities; by threatening to discharge employees because of their protected, union activities; by threatening to physically harm employees because of their protected, union activities; by threatening to physically harm the families of employees because of the employees' protected, union activities; and by physically assaulting employees because of the employees' protected, union activities; (B) violated Section 8(a)(5) and (1) by violating the terms of its collective-bargaining agreement with the Union, including refusing to process grievances; refusing to accept mail from the Union containing grievances; refusing to pay contractually required health, pension, vacation, and other benefits; unilaterally changing the work schedule of employees; unilaterally changing the waiting period to qualify for holiday pay; and refusing to pay contractually required wages; (C) violated Section 8(a)(5) and (1) by repudiating its collective-bargaining agreement with the Union; (D) violated Section 8(a)(3) and (1) by unlawfully discharging 17 employees for engaging in an unfair labor practice strike; and (E) violated Section 8(a)(2) and (1) of the Act by recognizing and entering into an agreement with Iron Workers Local 433 while the Respondent's contract with the Union was still in effect. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Schaumber, and Walsh participated.)

Charges filed by Carpenters Local 1780; complaint alleged violations of Section 8(a)(1), (2), (3), and (5). Hearing at Las Vegas, Oct. 10–12, 2006. Adm. Law Judge Joseph Gontram issued his decision Jan. 26, 2007.

Goddard Riverside Community Center (2-UC-583; 351 NLRB No. 84) New York NY Dec. 28, 2007. The Board reversed the Regional Director's finding that a unit clarification petition, seeking to exclude the team leader classification from the unit, could not be processed because that classification (now alleged to be supervisory), existed at the time of the parties' 1990 stipulated election agreement and had been included in the unit since that time. Relying primarily on *Premier Living Center*, 331 NLRB 123 (2000), the Regional Director found that the parties had the opportunity to litigate the issue of the team leaders' inclusion in the unit during the 1990 representation proceeding, but did not do so. The Regional Director therefore concluded that the parties should not be afforded the opportunity to litigate this issue in a subsequent unit clarification proceeding. Additionally, the Regional Director found no exception to the Board's "relitigation rule" because there was no evidence that the duties and responsibilities of the team leaders had changed since the unit was certified in 1990. [\[HTML\]](#) [\[PDF\]](#)

In reversing the Regional Director, the Board found that *Premier Living Center* did not specifically address the question presented here of whether parties are precluded from litigating the disputed employees' supervisory status where they did not specifically stipulate to the status of those particular employees. Instead, the Board found that *Washington Post Co.*, 254 NLRB 968 (1981), provided the correct standard for determining whether the UC petition may be processed in this case. That case specifically held that when presented with an appropriate petition, the Board is "required" to exclude positions from a unit where the inclusion of those positions would violate the basic principles of the Act. Because the disputed positions in this case were alleged to be supervisory and thus their inclusion in the unit would have violated statutory principles, the Board only needed to examine whether the petition was filed at an appropriate time. Based on the record testimony, the Board agreed with the Regional Director that it was.

Accordingly, the Board found that the processing of the UC petition is not precluded by the "relitigation rule" set forth in *Premier Living Center* because the parties did not specifically address the status of the disputed team leaders in the prior representation proceeding. The petition was therefore reinstated, and the case remanded to the Regional Director for further processing.

(Members Liebman, Kirsanow, and Walsh participated.)

H & R Industrial Services, Inc. (4-CA-34848; 351 NLRB No. 81) Allentown, PA Dec. 28, 2007. The Respondent, a plumbing, heating, and air conditioning contractor, was bound to an area collective-bargaining agreement (herein Agreement) with the Carpenters Union and Philadelphia and Vicinity Millwright Contractors Association. In mid-2006 the Union discovered the existence and possible connection between the Respondent and H & R Maintenance, another company performing millwright work covered by the Agreement in the local area. This discovery led to the Union's reasonable belief that the Respondent and H & R Maintenance were closely related companies so as to obligate H & R Maintenance to abide by the Agreement. The Union raised its suspicions about H & R Maintenance during a June telephone conversation with the Respondent's officials. When confronted by the Union, the Respondent claimed that H & R Maintenance was a separate company having nothing to do with it. The Respondent's denial of any connection to H & R Maintenance prompted the Union to submit a July 26, 2006 letter requesting certain information about a possible interrelationship between the two companies. The Respondent failed to respond to the information request, and it provided none of the requested information to the Union. The Board unanimously adopted the administrative law judge's decision, finding that the Respondent had unlawfully failed and refused to provide relevant information requested by the Carpenters Union, in violation of Section 8(a)(5) and (1) of the Act. In adopting the violation, Member Schaumber found that the June 2006 telephone conversation and the July 26 letter sufficiently demonstrated to the Respondent that the Union had an objective basis for believing that the requested information was necessary for, and relevant to, the proper performance of its statutory duties. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Schaumber, and Walsh participated.)

Charge filed by Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland; complaint alleged violations of Section 8(a)(5) and (1). Hearing held at Philadelphia on March 6, 2007. Adm. Law Judge Jane Vandeventer issued her decision June 1, 2007.

Sprain Brook Manor Nursing Home, LLC (2–CA–37258, 37448; 351 NLRB No. 75) Scarsdale, NY Dec. 21, 2007. The Board found numerous violations of Section 8(a)(1), (3), and (5) of the Act both before and after a Sept. 22, 2005 representation election in which the Union became the exclusive collective-bargaining representative of the bargaining unit employees. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by photographing and placing employees under surveillance while they engaged in protected concerted activity, violated Section 8(a)(3) by discharging Catherine Alonso and Alvin Nicholson, disciplining Clarissa Nogueira, and reducing the overtime hours of Nogueira, Karen Bartko, and Marjorie Ridgeway; and violated Section 8(a)(5) by increasing employees' wages and reducing overtime of employees without providing the Union with notice and an opportunity to bargain. The Board additionally adopted the judge's findings that the Respondent violated Section 8(a)(1) by threatening employees with more onerous working conditions, threatening to cut overtime, interrogating employees, soliciting grievances, making statements indicating that support for the Union would be futile, and threatening employees with discharge for participating in protected activities.

The Board, however, reversed the judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(1) by engaging in surveillance of employees' union activities. During the organizing campaign, nursing home administrator Eleanor Miscioscia stood at an exit door to the Respondent's facility and observed employees meeting with union representatives in the parking lot area. Because Miscioscia's actions were out of the ordinary and by her own testimony, she was at the facility solely for the purpose of observing union activity, her conduct constituted unlawful surveillance.

The Board also reversed the administrative law judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(1) by calling the police. While an employer can take reasonable steps to prevent nonemployees from trespassing onto private property, the Respondent failed to establish that nonemployee organizers were encroaching on the Respondent's property. In the absence of any showing by the Respondent that it was motivated by reasonable concerns when it called the police on the above days, and in the absence of any evidence indicating the need for a police presence, the Respondent's actions violated Section 8(a)(1).

A majority of the panel additionally found that the Respondent violated Section 8(a)(1) by hiring an armed security guard after the election. In light of all the ways in which the Respondent acted unlawfully in response to the employees' union activity, and in the absence of any legitimate explanation for the Respondent's decision to add additional (and armed) security, the Board concluded that the hiring of the second security guard reasonably tended to intimidate or coerce employees engaged in protected activities.

Member Schaumber dissented from this finding of a violation. He observed that there was no evidence that the Respondent's security guard conducted surveillance of employees while they engaged in concerted protected activity, or that the guard otherwise engaged in any behavior that would tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Instead, the record shows only that the guard was armed and that he worked about 4 hours a day, in the morning or afternoon, during shift changes. The majority's finding of a violation of the Act on these facts is unprecedented, in Member Schaumber's view.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by New York's Health and Human Services 1199/SEIU; complaint alleged violations of Section 8(a),(1) (3), and (5). Hearing at New York, May 3-5, 8, and 15, 2006. Adm. Law Judge Michael A. Rosas issued his decision Sept. 29, 2006.

United States Postal Service (25-CA-29340; 351 NLRB No. 82) Valparaiso, IN Dec. 28, 2007. The Board adopted the administrative law judge's finding that the Respondent violated Robert Kuch's *Weingarten* rights when it refused to allow a union representative to participate and assist Kuch during an interview. In adopting the judge's conclusion, the Board additionally relied upon *Lockheed Martin Astronautics*, 330 NLRB 422 (2000), in finding that the participation of Kuch's union representative was improperly limited at a crucial juncture of the interview. [\[HTML\]](#) [\[PDF\]](#)

Member Kirsanow questioned whether *Lockheed* and this case departed from the Supreme Court and the Board's original understanding of the *Weingarten* rule but concurred since *Lockheed* was not distinguishable. Noting that Kuch's representative was invited to speak later, Member Kirsanow did not consider this case an instance where the right to an immediate response from a *Weingarten* representative must be protected.

(Members Liebman, Kirsanow, and Walsh participated.)

Charge filed by the Letter Carriers Branch 753; complaint alleged violation of Section 8(a)(1). Hearing at Valparaiso on May 4, 2006. Adm. Law Judge Margaret G. Brakebusch issued her decision June 30, 2006.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Stage Employees Local 720 (Individuals) Las Vegas, NV Dec. 26, 2007. 28-CB-6336, et al.; JD(SF)-35-07, Judge John J. McCarrick.

Chinese Daily News (Communications Workers) Monterey Park, CA Dec. 26, 2007. 21-CA-36178, et al.; JD(SF)-36-07, Judge Lana H. Parke.

Ampersand Publishing, LLC d/b/a Santa Barbara News-Press (Teamsters and an Individual) Santa Barbara, CA Dec. 26, 2007. 31-CA-27950, et al.; JD(SF)-37-07, Judge William G. Kocol.

The Beverage Works NY, Inc. (an Individual) Brooklyn, NY Dec. 27, 2007. 29-CA-28265; JD(NY)-52-07, Judge Steven Davis.

Carpenters Michigan Regional Council, Local 687 (Convention & Show Services, Inc.) (an Individual) Detroit, MI Dec. 27, 2007. 7-CB-15293; JD-80-07, Judge Paul Bogas.

Laborers Local 190 (VP Builders, Inc.) (an Individual) Albany, NY Dec. 27, 2007. 3-CB-8687; JD(NY)-53-07, Judge Joel P. Biblowitz.

MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing (Plumbers Local 34) North Branch, MN Dec. 28, 2007. 18-CA-18216, et al.; JD-82-07, Judge David I. Goldman.

EZ Supply Corp. and Sunrise Plus Corp., alter egos (Industrial Workers of the World, New York City General Membership Branch) Ridgewood, NY Dec. 28, 2007. 29-CA-27927, et al.; JD(NY)-54-07, Judge Eleanor MacDonald.

Steel Products Erection Corp. (Iron Workers Local 489) Scranton, PA Dec. 28, 2007. 4-CA-35222; JD-81-07, Judge Richard A. Scully.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file a timely answer to the reissued complaint and compliance specification.)

Cattleman's Meat Co. (Food & Commercial Workers Local 876) (7-CA-50213; 351 NLRB No. 83) Detroit, MI Dec. 28, 2007. [\[HTML\]](#) [\[PDF\]](#)

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to and
adopted Reports of Regional Directors or Hearing Officers)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

*The Avenue Nursing and Rehabilitation Center, Schenectady, NY, 3-RC-11761,
Dec. 27, 2007 (Members Liebman, Schaumber, and Walsh)*

DECISION AND DIRECTION OF SECOND ELECTION

*Standex Air Distribution Products, Inc. d/b/a ALCO Manufacturing, New Orleans, LA,
15-RC-08698, Dec. 28, 2007 (Members Liebman, Schaumber, and Kirsanow)
Jupiter Aluminum Corp., Hammond, IN, 13-RD-02565, Dec. 28, 2007
(Members Schaumber, Kirsanow, and Walsh)*

*(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

*CHC La Clinica, Pasco, WA, 19-RD-03761, Dec. 27, 2007 (Members Liebman,
Kirsanow, and Walsh)
Hall Ambulance Service, Inc., Bakersfield, CA, 31-RC-08671, 31-RM-01287,
Dec. 27, 2007 (Members Liebman, Schaumber, and Kirsanow)
E.B. Eames Co., Inc., Logan, UT, 28-RM-00609, Dec. 27, 2007 (Members Liebman,
Schaumber, and Kirsanow)
Puerto Rico Telephone Co., Inc., San Juan, PR, 24-UC-00241, Dec. 28, 2007
(Members Liebman, Schaumber, and Kirsanow)
Waste Management of Pennsylvania Inc. d/b/a Waste Management of Bristol,
Bristol, PA, 4-RD-02123, Dec. 28, 2007 (Members Kirsanow and Walsh;
Member Schaumber dissenting)*
